

Honolulu, Hawaii

MAR 20 2019

RE: H.B. No. 748
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 748, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, excluding the forfeiture proceedings for an animal pending criminal charges; and
- (2) Require the Attorney General to distribute one half of all forfeited property and sale proceeds thereof to the Hawaii law enforcement assisted diversion program, with the remaining half to be distributed to the state general fund.

Your Committee received testimony in support of this measure from the LGBT Caucus of the Democratic Party of Hawaii, Community Alliance on Prisons, The Drug Policy Forum of Hawai'i, and American Civil Liberties Union of Hawai'i. Your Committee received testimony in opposition to this measure from the Department of Land and Natural Resources, Department of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting



Attorney of the County of Hawai'i, Office of the Prosecuting Attorney of the County of Kaua'i, Honolulu Police Department, and Maui Police Department. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that asset forfeiture can be an effective tool for law enforcement to disrupt criminal activity and protect the community. However, your Committee further finds that allowing asset forfeiture to proceed before conviction is contrary to the presumption of innocence in criminal cases and has the potential to unjustly violate the property rights of some persons. Your Committee additionally finds that the prohibition of forfeiture until after conviction should not be construed to limit the ability of law enforcement to seize property prior to conviction as provided by law.

Accordingly, your Committee has amended this measure by:

- (1) Clarifying that property may be seized prior to felony conviction as provided by law;
- (2) Providing for the reimbursement of any costs incurred by the Department of the Attorney General related to the seizure or storage of seized property before forfeited property and the sale proceeds thereof are distributed to the Hawaii law enforcement assisted diversion program and state general fund; and
- (3) Changing the effective date to March 1, 2020.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 748, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 748, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

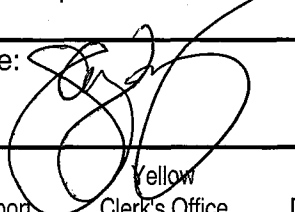
Karl Rhoads

KARL RHOADS, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:* HB 748 HD2	Committee Referral: JDC, WAM	Date: 3/14/19		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
WAKAI, Glenn (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
FEVELLA, Kurt				✓
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes